



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/13738/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 3 October 2019**

**Decision & Reasons Promulgated
On 14 October 2019**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**M H B
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Malik, of Counsel, instructed by R. Spio and Co.
Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before me following the grant of permission to appeal by Designated First-tier Tribunal Judge Macdonald on 27 August 2019 against the determination of First-tier Tribunal Judge Young, promulgated on 19 July 2019 following a hearing at Hatton Cross on 4 June 2019.

2. The appellant is a Pakistani national born 24 October 1988. He entered the UK as a student in December 2009 and subsequently obtained further grants of leave until under Tier 4 and, according to the respondent, under Tier 2 until 15 April 2017, although the appellant maintains he was a Tier 2 dependant from 11 May 2016 until 13 April 2017 (witness statement p.4, SB). Plainly he cannot have been a dependant if in 2015 his wife was seeking to remain on the basis of her relationship to him. This detail is, however, immaterial to the issues.
3. The appellant made visits to Pakistan in August 2011, June 2012, February 2016 and June 2016. A year after his last entry, on 21 June 2017, he claimed asylum on the basis that his family had been involved in a land dispute and that when he had last been in Pakistan, he had been attacked. He claimed that in early June 2017 he had become aware that a warrant for his arrest had been issued against him because it was believed that he had been involved in an incident in 2013 when a security guard had been killed. What had previously happened was that his paternal cousin, KM, had killed three family members in 2011 over a property dispute and then fled to the UK as he was a British national or a UK resident. In 2013 the appellant's brother, FAB, had killed one of KM's security guards, allegedly in self-defence.
4. The appellant also maintained that he was married under Islamic law to KK/ZB, an Indian national, and that he had taken their daughter (born August 2014) to Pakistan and left her there with his mother. He had returned with her in June 2016 to arrange entry clearance for her return as she was here without leave but had to leave her there when he fled following the attack. Thereafter, his sponsor's licence was revoked and so he could no longer work and his daughter could not seek entry clearance to join him. It is unclear whether an application had been made prior to his departure.
5. The appellant's wife entered the UK in October 2010 as a student and subsequently obtained discretionary leave until 13 November 2014 in order to give birth to her daughter (now in Pakistan). Her subsequent application on 12 November 2014 for leave as her husband's dependant was refused and her article 8 appeal was heard at Hatton Cross by First-tier Tribunal Judge Kimnell on 14 September 2015 and dismissed on 29 September 2015. I have no evidence of whether she acquired any status thereafter but certainly she had none at the time of the decision in the appellant's case when she was also refused leave as the applicant's dependant. At her hearing, the appellant's wife stated that her intention was to return to India with her daughter. She also maintained, however, that she could not return there with her husband as she had

converted to Islam. It was argued that the child was stateless and was unable to obtain nationality from either India or Pakistan. Plainly that was incorrect as the child obtained a Pakistani passport shortly afterwards.

6. The appellant's claim was refused on 14 December 2017. The respondent did not accept that the claim of a family land dispute engaged the Refugee Convention. She also found inconsistencies in the claim. She considered that the appellant had not been in Pakistan in 2013 and so it was unlikely that he would be considered to have been involved in the incident. The delay in the making of the claim, some 12 months after his return from Pakistan, allegedly when he had been in fear for his life, was also taken into account.
7. The appeal was initially heard by First-tier Tribunal Judge Wilson at Hatton Cross on 29 January 2018. It was dismissed on 2 February 2018. However due to the lack of clarity in the determination (it appears as though voice recognition software was used with no subsequent proof reading), the decision was set aside by Deputy Upper Tribunal Judge Chapman on 2 August 2018. It then came before First-tier Tribunal Judge Young at Hatton Cross on 4 June 2019 and was dismissed on 19 July 2019.
8. The judge rejected the claim of a real risk of persecution on account of the property dispute and the alleged accompanying events. The claim is convoluted and contains numerous difficulties but as no direct challenge has been made to any particular findings on the asylum/humanitarian protection claim, there is no need to set the details out in any detail at this stage. Suffice to say that the claim was rejected, and that the judge did not accept that the appellant had experienced any problems on his return visits in 2016. Indeed, the judge found that the family's property dispute had been exaggerated and the account of the attack had been added to boost it so that the appellant could find a way to remain in the UK after his discovery in 2017 that his employer's sponsor licence was under investigation and was revoked on 10 May 2017. The judge found that tied in perfectly with the timing of the asylum claim.
9. It was argued at the hearing, and appears to have been raised for the first time before Judge Chapman, that there would be problems for the appellant's wife if she accompanied him to Pakistan as she was a Sikh and an Indian national. This was further pursued as an argument before Judge Young and an expert report was adduced to support the contention that the wife would not be welcome in Pakistan.

10. The judge rejected this claim, finding that the wife had converted to Islam and changed her name and that the Islamic marriage would be accepted in Pakistan where their daughter now lived. The judge also found that the evidence did not establish that there was a real risk that the wife's mental health (after losing a second child shortly after its birth in May 2018) would deteriorate if she was removed to such an extent as to engage article 3 or 8. He accepted that the appellant would not be able to relocate to India but found that family life could continue in Pakistan. He also took account of the fact that both the appellant and his wife had come to the UK for studies and had no expectation of being able to reside here. He found that there would be no very significant obstacles to integration. Accordingly, the appeal was dismissed on all grounds.

The Hearing

11. Mr Malik relied on his grounds which he expanded in his submissions at the hearing on 3 October 2019.
12. The following arguments were made. First, it was argued that the judge's approach as to whether the appellant's wife could relocate to Pakistan was legally flawed and inconsistent with CS and Others (Proof of Foreign Law) India [2017] UKUT 199 (IAC). That was a case which concerned an Indian male, a Pakistani wife and three children. Mr Malik referred me to paragraph 22 of the determination and argued that in the present case the judge should have found that the Secretary of State's failure to adduce documentary evidence of Pakistan's immigration laws meant that as in CS, the cornerstone of her case had collapsed and crumbled. Mr Malik maintained that the burden was on the respondent to prove that relocation to Pakistan was a viable option. He also argued that there was a conflict in the evidence as to the wife's conversion and this was not resolved by the judge.
13. Mr Malik's second ground was that the judge had applied the wrong test in considering the claim based on the appellant's wife's suicide risk. It was argued that in seeking clear evidence that suicide would be the result of removal, the judge failed to consider whether there would be a real possibility of suicide. The judge is criticised for failing to refer to and follow binding authorities such as J [2005] EWCA Civ 629 and Y and Z [2009] EWCA Civ 362. He is also criticised for the reference to the availability of medical treatment in India (at 146).
14. The third ground was that the judge had applied the wrong standard of proof and failed to ask the right question when considering the protection claim. Mr Malik relied on ME (Sri Lanka) [2018] EWCA Civ 1486 and argued that in accordance with paragraph 18 of that judgment, it was unsatisfactory for the fact finder to express findings of fact in the negative. He argued that Judge Young had consistently

approached his assessment in a binary manner and expressed himself in the negative. Mr Malik submitted that the decision should be set aside and remitted to the First-tier Tribunal for a fresh decision.

15. For the respondent, Mr Melvin relied upon the Rule 24 response. He submitted that it was not a misdirection in law for the judge to have expressed himself as he did. If that was indeed a valid argument, it would have been the first and not the last ground put forward and there would be a raft of applications being made all relying on that point. On the issue of the appellant's wife's conversion, although it was now said that she had duped the imam, there was a conversion certificate and they had a daughter in Pakistan with whom they would be reunited. With reference to the case of CS, Mr Melvin argued that the reason that appeal was allowed was because the family would have been fragmented by removal to two different countries. Here, it was for the appellant to show that his wife could not return with him as a spouse. The expert report was unhelpful as it was prepared on the basis that the wife was Sikh whereas the evidence was that she had converted and had married the appellant in an Islamic marriage. There was no obligation in those circumstances for the Secretary of State to prove that Pakistan would accept the appellant's wife.
16. Mr Melvin submitted that the judge had adequately addressed the issue of suicide risk. There was no evidence of any previous attempts at suicide. There was a child in Pakistan. The newspaper reports referred to all dealt with Pakistan and this was a typographical error. There had been no actual challenge to any of the findings on the asylum claim. The judge's findings were adequate.
17. In response, Mr Malik maintained that although there was a certificate of conversion, there was also the appellant's evidence that that had been done for convenience. The judge had not resolved the issue of faith. There was also the problem of the wife's nationality and there was no evidence on the domestic law of Pakistan. Mr Malik repeated his argument that it was for the Secretary of State to show relocation to a particular country would be possible and proportionate.
18. Mr Malik submitted that Mr Melvin had no basis on which to argue that the reference to India was a typographical error and he had not taken the Tribunal to the newspaper articles he referred to. The medical claim had been dismissed using the wrong test. The first child was living apart from the mother in Pakistan and the second child had died in her arms, so it was not surprising that she was suicidal. Even if the third ground was not considered to be

meritorious, there was enough in the first and second to warrant the setting aside of the decision and a remittal to the First-tier Tribunal for a fresh hearing and decision.

19. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

Discussion and Conclusions

20. Having considered all the evidence and the submissions made, I find that the contended errors of law have not been made out. I take each complaint in turn.
21. On the issue of the appellant's wife removal to Pakistan, I find that CS is not on point and cannot be used as authority for the proposition that the burden is on the respondent to show that KK would be admitted to Pakistan. The facts of CS were fundamentally different to those in the present case as was the issue to be decided. In that case the respondent proposed removing the Indian father/husband to India with one child and the Pakistani mother/wife to Pakistan with the remaining two children. The respondent was of the view that family reunification could take place post removal in India. It was on that basis that the Tribunal held that the burden lay with the Secretary of State. In the present case there is no plan to fragment the family. It is proposed to remove both the appellant and his dependent wife to Pakistan. Plainly if her admittance proves to be a problem, then the respondent will have to reassess the situation but the practicality of removal is not a matter for the Tribunal at this stage.
22. Nor is it arguable that the cornerstone of the respondent's case "*crumbles and collapses*". The cornerstone of the respondent's case in CS was the proposal that post removal reunification in another country would be possible. It was in that context that the Tribunal held that the respondent was required to show that such reunification would be viable. The appeal was allowed because on the available evidence the Tribunal found that such a prospect was "*highly uncertain*". It is also of note that in CS there had been no conversion of faith by either spouse.
23. That brings me to the complaint made by Mr Malik about the judge's failure to resolve the contradictory evidence about the appellant's wife's conversion and change of name. It is not for the judge to resolve this inconsistency but for the appellant to do so. The judge had a certificate of conversion. He had an Islamic marriage

certificate. He had the wife's interview notes where she gave her faith as 'Muslim' and stated that she had changed her name to ZB. That name also appears on the birth certificates of the children born to the couple. Further, the wife's evidence in her appeal was that she could not return to her own family as she had converted to Islam. It is now argued that the appellant had given evidence that in fact the conversion and change of name was just for convenience. The appellant's witness statement (SB C: paragraph 82) confirms this and I was also pointed to his similar oral evidence (at 72 of the determination). It is hardly surprising in the face of all this evidence that the judge found that "*the faith of Mrs Kaur changes depending on the advantage that is sought to be made*" (at 152). It certainly does appear that the appellant and his wife are cynically exploiting their position depending on the case they wish to put. Having admitted to lying about the conversion, there is no reason why the judge should believe the change in story that the conversion was in fact a sham. Indeed, if it was, it is difficult to understand why KK would have told her family that she had changed her religion and have exposed herself to their wrath. It also goes against the entire thrust of her appeal before Judge Kimnell when she maintained that she could not go to India as she had converted to Islam.

24. The judge also had expert evidence and documents about the position of a foreign wife in Pakistan. He was entitled to observe that the report was based on the premise that the wife remained a Sikh and that it was not, therefore, helpful. The evidence from Pakistan's Directorate General of Immigration sets out a procedure by which "*foreign ladies married to Pakistan nationals*" can acquire citizenship. The evidence from the Indian advocate (Bundle B) was that Pakistan and India had signed a bilateral visa agreement in 2012 and that the spouse of a Pakistani national would be entitled to a long-term visa. There is also reference in the Government of India Ministry of Home Affairs documents about the category of Indian women returning to India from Pakistan after widowhood or divorce which further suggests that there are Indian women in Pakistan. No attempts have been made by the appellant and his wife to approach the Pakistani authorities in this country to make the necessary enquiries. I note that after arguing that their daughter would be stateless because she could not be registered as a Pakistani national, found to be an example of "*manipulating the evidence*" by Judge Kimnell (at paragraph 26 of the KK determination), the child was able to obtain a passport shortly thereafter and travel to Pakistan on it.
25. Also of relevance is the fact that at no point in his asylum application did the appellant make any claim that his wife would face any difficulties in Pakistan or that there would be any issue as to her admission. Similarly, she herself as part of her application did not maintain that she would be at risk in any way in Pakistan other than

because of the appellant's property dispute, a claim that was rejected.

26. The next ground put forward by Mr Malik was that the wrong test had been applied when the appellant's wife's suicide claim had been considered. It is argued that the judge should have been looking for whether there was a real risk of suicide if removal to Pakistan was to take place and not clear evidence of same, as he stated at paragraph 145. The judge was plainly clumsy in how he expressed himself but looking at the assessment of the wife's mental health as a whole, I cannot find that that 'error', if poor phraseology can be described as such, warrants a setting aside of his decision.
27. The basis for the appellant's wife's depression is plainly the death of her second child shortly after birth in May 2018 in what I accept are heart rending and tragic circumstances and exacerbated by the separation from her daughter (who has been in Pakistan since June 2016). The appellant confirms this in his witness statements and notes that the separation from their daughter after the death of their baby has made the situation worse with his wife crying for her absent child. The report from Dr Kashmiri also confirms that low mood was triggered by the loss of the new born child following complications in pregnancy and difficulties in being away from her daughter (at 2.41, 2.44 and 2.6). The conclusion to be drawn from this is that the depression, anxiety and low mood are linked to family losses rather than leaving the UK or to a fear of going to Pakistan. Indeed, the medical report deals with a return to India rather than to Pakistan (at 5.19 and 5.42). Astonishingly, the doctor does not even touch upon how KK's condition would be affected were she to be reunited with her daughter in Pakistan. That seems to me to be a serious flaw in the report.
28. The judge was criticised for not dealing with whether there would be a real risk of suicide were removal to take place however in the absence of any professional view about how mood could in fact change for the better were there to be a reunion with the child in Pakistan, it is difficult to see how the decision could have been any different. The evidence before the judge did not meet the J test, even if that test was not specifically referred to. The judge did cite N (Kenya) [2004] UKIAT 00053, N v UK, Paposhvili v Belgium and KH (Afghanistan) [2009] EWCA Civ 1354. Any errors in how he phrased the risk to be considered are not material and could not have led to a different outcome on the available evidence.
29. Mr Malik also made strong criticisms of the judge's "*indefensible*" reference to newspaper articles on the availability of medical treatment and drugs in India (at 144 and 146). It is argued that the

judge was wrong to have looked at this and that he should have been referring to evidence on Pakistan. Mr Melvin suggested it was a typographical error. Neither party is right. The judge was given numerous newspaper articles to consider. These are attached to the representations made on 4 June 2019 by the appellant's previous representatives and, as the judge correctly observed, they all related to medical treatment in India. The representations themselves also contain repeated references to these articles (for example at paragraph 5, 6, 7 and 8) and make the submission that KK would be unable to access health care in India (at paragraphs 15-16). There was, therefore, no error at all made by the judge when he referred to India in the impugned paragraphs of his determination. The articles formed part of the evidence before him and he was required to consider them. There are also Pakistani newspapers articles but those refer to the appellant's asylum claim and were dealt with elsewhere in the determination.

30. Mr Malik's final point related to the judge's application of the standard of proof with respect to the asylum claim. It is, with respect, his weakest. Mr Malik relies on ME (Sri Lanka) [2018] EWCA Civ 1486 for the court's criticism at paragraph 18 of the negative findings made by the judge who had dismissed the appeal. In my view this has been taken out of context. The criticism applied to the discrete issue of whether that appellant was at risk of not being believed by the authorities when he maintained he had no information to hand over (at paragraph 17). I do not see it as authority for the contention that fact finders should not express findings of fact in the negative. Moreover, this criticism by the Court of Appeal was made after numerous difficulties with the determination were identified. Judges are required to make findings of fact on claims. Some will be positive, some will be negative. This does not mean that the wrong standard of proof has been applied. Judge Young properly directed himself at paragraphs 8-12 and there is nothing to suggest that he did not apply the lower standard.
31. For all these reasons, therefore, despite Mr Malik's able submissions and arguments, I conclude that the judge's determination contains no errors of law and the decision to dismiss the appeal on all grounds stands.

Decision

32. The decision of the First-tier Tribunal is upheld. The appeal is dismissed on asylum, humanitarian protection and human rights grounds.

Anonymity

33. I continue the anonymity order made by the First-tier Tribunal.

Signed

A handwritten signature in black ink, appearing to read "R. Keir". The signature is written in a cursive style with a small dot at the end.

Upper Tribunal Judge

Date: 7 October 2019